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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/602,098	06/23/2003	Hakjin Kim	1683.012	9518

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EXAMINER
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THANH, QUANG D

ART UNIT	PAPER NUMBER
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3764

DATE MAILED: 11/08/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/602,098	KIM, HAKJIN	
	<b>Examiner</b>	<b>Art Unit</b>	
	Quang D. Thanh	3764	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 23 June 2003.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-83 is/are pending in the application.
- 4a) Of the above claim(s) 1-40 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 41-83 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                        | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)               | Paper No(s)/Mail Date. _____  |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date <u>7/7/04, 10/11/04, 4/15/05</u>   | 6) <input type="checkbox"/> Other: _____                                    |

## DETAILED ACTION

### *Election/Restrictions*

1. Restriction to one of the following inventions is required under 35 U.S.C. 121:
  - I. Claims 1-40, drawn to a method of massaging the body of a patient, classified in class 601, subclass 1.
  - II. Claims 41-83, drawn to an apparatus, classified in class 601, subclass 99.

The inventions are distinct, each from the other because of the following reasons:

2. Inventions II and I are related as product and process of use. The inventions can be shown to be distinct if either or both of the following can be shown: (1) the process for using the product as claimed can be practiced with another materially different product or (2) the product as claimed can be used in a materially different process of using that product (MPEP § 806.05(h)). In the instant case, the process for using the product (method of massaging the body) as claimed in group I can be practiced with another materially different apparatus that does not require elements such as first and second axis controllers as claimed in group II.
3. Because these inventions are distinct for the reasons given above and have acquired a separate status in the art as shown by their different classification, restriction for examination purposes as indicated is proper.
4. During a telephone conversation with Chanmin Park on 12/16/2004, a provisional election was made without traverse to prosecute the invention of group II, claims 41-83. Affirmation of this election must be made by applicant in replying to this Office action.

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Claims 1-40 are withdrawn from further consideration by the examiner, 37 CFR 1.142(b), as being drawn to a non-elected invention.

***Claim Rejections - 35 USC § 112***

5. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

6. Claims 65-66 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. Claim 65 recites "a predetermined ***width curve*** in a plane defined by the ***second*** axis and the third axis", but in contrast claim 66 recites "the ***first*** axis controller and the third axis controller control the movement of the pressure applying member following the ***width curve***". Therefore, it is unclear to the examiner whether the ***width curve*** is defined by the ***second*** axis and the third axis (in YZ plane) or the ***width curve*** is defined by the ***first*** axis and the third axis (in XZ plane). The specification on p. 10 also discloses the limitations as mentioned above and therefore is unclear and confusing.

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7. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

8. Claims 41-83 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Re claim 41, it is not clear to the examiner what the applicant intend to claim in the following phrase "the first axis coordinate of the height curve is defined by a first function of time, and the second axis coordinate of the height curve is defined by a second function of the first axis coordinate". The height curve, which is the body contour of a patient, appears to be defined by the first axis and second axis, and therefore with respect to the height curve, the terms "coordinate" and "function" are not clear as to what they intend to claim.

9. Claim 64 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. The limitation "the temperature of the heating member controlled as a **third function (?)** of the first axis coordinate in the moving step" is unclear as to how a temperature can be a function (?) of a displacement along an axis? , and "the moving step" lacks antecedent basis.

10. Claim 65 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. The limitation "the **third axis coordinate** of the **width curve** is defined by a **fifth** function of the first axis coordinate" is unclear. There is no first and second coordinate of the width curve recited yet. There is no fourth function recited yet.

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It is not clear as how a coordinate of an axis can be a function of a coordinate of another axis ?

11. Claims 65-66 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Claim 65 recites "a predetermined **width curve** in a plane defined by the **second** axis and the third axis", but in contrast claim 66 recites "the **first** axis controller and the third axis controller control the movement of the pressure applying member following the **width curve**". Therefore, it is unclear to the examiner whether the **width curve** recited in claim 65 is the same as the **width curve** recited in claim 66 ? And if it is the same then is it defined by the **second** axis and the third axis (in YZ plane) or is it defined by the **first** axis and the third axis (in XZ plane)?

12. Claims 42-83 are also rejected because they depend on a rejected claim.

### ***Claim Objections***

13. Claim 41 is objected to because of the following informalities: it is noted that the phrase "for massaging the body of a patient, who is resting on a upper surface portion of a platform, wherein the upper surface portion comprises a first end and a second end" is considered to be a preamble and thus has not given patentable weight. If applicant intends to positively claim the platform then it is suggested that the platform be included in the body of the claim after the phrase "the apparatus comprising". Appropriate correction is required.

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14. Claims 46-61, 75 and 80-82 are objected to under 37 CFR 1.75(c), as being of improper dependent form for failing to further limit the subject matter of a previous claim. It is not clear how much patentable weight can be given to the language of the claims. These claims appear to merely describe functional intended use language and fail to positively recite any further structural limitations.

15. Claim 47 is objected to because of the following informalities: "the second axis coordinate" lacks antecedent basis. Appropriate correction is required.

16. Claim 55 is objected to because of the following informalities: "the convex portion" lacks antecedent basis. Appropriate correction is required.

17. Claim 59 is objected to because of the following informalities: "the reference point" lacks antecedent basis. Appropriate correction is required.

***Claim Rejections - 35 USC § 102***

18. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

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19. Claims 41-49, 65-69, 71-73, 75, and 79-83 are rejected under 35 U.S.C. 102(b) as being anticipated by Lipowitz.

20. Re claim 41, as best understood, Lipowitz discloses an apparatus (fig. 1) for massaging the body of a patient, who is resting on an upper surface portion of a platform 6, wherein the upper surface portion comprises a first end and a second end (fig. 1), the apparatus comprising: a pressure applying member 28 that is movable between the first end and the second end for a predetermined longitudinal stroke along a first axis (Y axis see abstract) that is parallel to the upper surface portion and longitudinal to the platform; and a second axis (Z axis, see abstract) that is perpendicular to the first upper surface portion; a first axis controller 102 (Y axis drive sub-system 102, col. 6, lines 2-13) that controls movement of the pressure applying member along the first axis (col. 6, lines 14-16); and a second axis controller 106 that controls movement the pressure applying member along the second axis (col. 6, lines 20-23); wherein the movement of the pressure applying member follows a predetermined height curve in a plane defined by the first axis and the second axis.

21. Re claims 42-49, Lipowitz discloses a microprocessor 100 that is connected to first axis controller 102 and the second axis controller 106 (col. 6, lines 3-13), wherein the microprocessor stores a plurality of height curves (contour of the body, col. 3, lines 65-68), and wherein the first axis controller and the second axis controller control the movement of the pressure applying member following the height curve selected by patient (col. 3, lines 65-68); wherein the first axis controller 102 comprises a first axis actuator (motor 10, col. 4, lines 14-26) and a first axis displacement sensor 68 (fig. 1-2,

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col. 5, lines 23-28), wherein the second axis controller 106 comprises a second axis actuator (motor 36, col. 4, lines 44-54) and a second axis displacement sensor 66 (fig. 1-2, col. 5, lines 23-28), wherein the first and second axis actuator moves the pressure applying member along the first and second axis respectively; wherein the second axis controller comprises a pressure sensor 50 (fig. 2, col. 5, lines 1-7), wherein the pressure sensor measures the pressure applied to the patient by the pressure applying member; wherein during the movement of the pressure applying member, the movement of the pressure applying member in the second axis direction stopped when the pressure applied by the pressure applying member reaches an adjustable massage pressure threshold (desired level of pressure, col. 5, lines 1-7); wherein body contour the patient is measured (data that gives the contour of the body, col. 3, lines 65-68); wherein a curve formed is memorized in the microprocessor (store data, col. 3, lines 65-68); wherein the height curve follows the backside contour of the patient.

22. Re claims 65-69, Lipowitz discloses the apparatus further comprising a third axis (X axis) controller 104 that controls movement of the pressure applying member along a third axis, wherein the third axis is perpendicular to the first axis and the second axis (col. 6, lines 17-19), wherein the movement of the pressure applying member follows a predetermined width curve; wherein the microprocessor is connected to the third axis controller 104, wherein the microprocessor stores a plurality of width curves (sine wave, col. 9, lines 12-16), and wherein the first axis controller and the third axis controller control the movement of the pressure applying member following the width curve selected by the patient (col. 16, lines 59-63); wherein the third axis controller comprises

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a third axis actuator 22 (col. 4, lines 30-37) and a third axis displacement sensor 64 (fig. 1), wherein the third axis actuator moves the pressure applying member along the third axis, and the third axis displacement sensor measures the displacement of the pressure applying member along the third axis; wherein the third axis controller further comprises a temperature sensor (infra-red sensor tube 42, fig. 1, col. 5, lines 48-51).

23. Re claims 71-73, and 75, Lipowitz discloses the maximum width of the width curve is adjustable (col. 5, lines 63-67); wherein the pressure applying member comprises one movable massage bump 28 (fig. 1) that protrude toward the patient, and the bumps follow the predetermined movement of the massage width curve; wherein the pressure comprises one fixed massage bump 28 (fig. 1); the movement of massage bump follow same width curve.

24. Re claims 79-83, Lipowitz discloses the height curve and the width curve form a massage surface which the pressure applying member follows; wherein the width curve follows the body contour of the patient; wherein body contour the patient is measured (data that gives the contour of the body, col. 3, lines 65-68); wherein a curve formed is memorized in the microprocessor (col. 3, lines 65-68); wherein a remote controller 110 is connected to the microprocessor (col. 12, lines 53-62).

25. Claim 41 is rejected under 35 U.S.C. 102(e) as being anticipated by Park (6,643,551).

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26. Re claim 41, as best understood, Park discloses an apparatus (fig. 1) for massaging the body of a patient, who is resting on a upper surface portion of a platform (bed 7, fig. 1), wherein the upper surface portion comprises a first end and a second end (fig. 1), the apparatus comprising: a pressure applying member 3/32 that is movable between the first end and the second end for a predetermined longitudinal stroke along a first axis that is parallel to the upper surface portion and longitudinal to the platform; and a second axis that is perpendicular to the first upper surface portion (fig. 3); a first axis controller 66 (col. 5, lines 11-30) that controls movement of the pressure applying member along the first axis (fig. 1); and a second axis controller (lifting means, col. 4, lines 6-14) that controls movement the pressure applying member along the second axis (fig. 3); wherein the movement of the pressure applying member follows a predetermined height curve (see abstract) in a plane defined by the first axis and the second axis.

***Claim Rejections - 35 USC § 103***

27. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

28. Claims 42, and 50-64 are rejected under 35 U.S.C. 103(a) as being unpatentable over Park in view of Lipowitz.

29. Re claim 42, Park discloses the claimed invention including a controller 5 except for a microprocessor connected to the first and the second axis controllers, wherein the microprocessor stores a plurality of height curves. However, Lipowitz teaches a massage apparatus comprising a controller 54 that includes processor 100 and a plurality microcontrollers for controlling operation of various axis controllers (col. 6, lines 3-13). Lipowitz also teaches that the computer can store data which gives contour of the body of the users so that the apparatus can apply different pressure and movement paths to different parts of the body (col. 3, line 65 to col. 4, line 3). Therefore, it would have been obvious to one of ordinary skill in the art at the time of invention was made to modify Park's device, to include a microprocessor that can store data which gives contour of the body of the users, as suggested by Lipowitz, such that the microprocessor can control and automatically alter the operating parameters for the purpose of applying different pressures and movement paths to different parts of the body (col. 3, line 65 to col. 4, line 3).

30. Re claims 50-59, Park already teaches that the pressure applying member 3 being moved up and down to a predetermined height during a predetermined period of time (see abstract), therefore it would be obvious one of ordinary skill in the art to program the microprocessor controller to control this vertical movement such that it would be square curve or convex portions in order to provide various types of massaging suitable to the user's condition. Re claims 60-61, it would be obvious one of ordinary skill in the art to vary the longitudinal stroke depending on different height of the user and to vary the height curve proportional to the longitudinal stroke.

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31. Re claims 62-64, Park discloses the platform comprises an upper platform 83 and a lower platform 82, wherein the upper platform supports the upper body of the patient, and the lower platform supports the lower body of the patient; wherein the upper platform 83 makes an angle with a horizontal surface, and the angle is adjustable (fig. 9, col. 3, lines 40-44); wherein the pressure applying member comprises a heating member (lamp 33, col. 3, lines 17-28).

32. Claim 70 is rejected under 35 U.S.C. 103(a) as being unpatentable over Lipowitz. Lipowitz discloses the claimed invention except for the width curve has a shape of a two-dimensional coil. However, Lipowitz teaches that motor control units are synchronized to move the pressure member in a predetermined pattern or any paths defined by the master control processor 100 (col. 9, lines 12-16). Therefore it would be obvious one of ordinary skill in the art to program the microprocessor controller to control the movement of the pressure member such that it would have a path or pattern of two-dimensional coil, for the purpose of providing various types of massaging patterns suitable to the user's condition.

33. Claims 74 and 76-78 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lipowitz in view of Lee (6,591,141). Lipowitz discloses the claimed invention including a massage bump 28 except for a plurality of massage bumps. Lee teaches a pressure applying member having plurality of movable massage bumps disposed symmetrical to the center. The massage bumps can be wheels (fig. 3A) or spheres (fig. 1A) in the form of longitudinal adjacent bumps spaced apart at a distance (figs. 1A and 3A). Therefore, it would have been obvious to one of ordinary skill in the art at the time

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of invention was made to modify Lipowitz's device, to include a plurality of massage bumps in the form of wheels or spheres disposed longitudinally adjacent to each other, as suggested by Lee, for the purpose of providing different types of massaging effect such as kneading or rolling massaging action as desired.

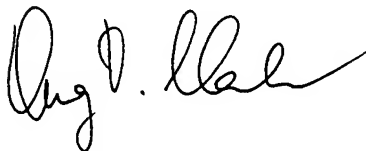
**Conclusion**

34. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Inada '701 discloses a massaging machine.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Quang D. Thanh whose telephone number is (571) 272-4982. The examiner can normally be reached on Monday-Thursday & alternate Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Steve Cronin can be reached on (571) 272-4536. The Central FAX phone number for the organization where this application or proceeding is assigned is (571) 273-8300 for all communications.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



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